

## SENATE BILL NO. 398

INTRODUCED BY K. MILLER, F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR OPERATION OF TEMPORARY POWER GENERATION UNITS UNDER THE AIR QUALITY PERMITTING LAWS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, THE LEGISLATURE FINDS THAT IT IS NECESSARY TO MEET MONTANA'S CONSTITUTIONAL MANDATE OF A CLEAN AND HEALTHFUL ENVIRONMENT; AND

WHEREAS, THE LEGISLATURE FINDS IT NECESSARY TO ALLOW, IN CERTAIN LIMITED AND CONTROLLED CIRCUMSTANCES, TEMPORARY EMERGENCY OPERATION OF POWER GENERATION UNITS PENDING THE COMPLETION OF THE STATE'S AIR QUALITY PERMITTING PROCESS, AS LONG AS AMBIENT AIR QUALITY STANDARDS ARE NOT VIOLATED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-2-211, MCA, is amended to read:

**"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;
- (g) requirements and procedures for suspension, modification, and revocation of permits by the department;
- (h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;
- (i) requirements and procedures for permit modification and amendment; and
- (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.
- (4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.
- (5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).
- (6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.
- (7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.
- (8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.
- (9) (a) If an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall

1 notify the applicant in writing of the approval or denial of the application within:

2 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8),  
3 if the department prepares the environmental impact statement;

4 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state  
5 agency other than the department has been designated by the governor as lead agency for preparation of  
6 the environmental impact statement; or

7 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that  
8 requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental  
9 impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

10 (b) If an application does not require the preparation of an environmental impact statement, the  
11 department shall notify the applicant in writing within 60 days after its receipt of a filed application, as  
12 provided in subsection (8), of its approval or denial of the application. The time for notification may be  
13 extended for 30 days by written agreement of the department and the applicant. Additional 30-day  
14 extensions may be granted by the department on request of the applicant. Notification of approval or denial  
15 may be served personally or by certified mail on the applicant or the applicant's agent.

16 (c) If an application for a permit is for the construction, installation, alteration, or use of a source  
17 that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the  
18 department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

19 (d) Failure by the department to act in a timely manner does not constitute approval or denial of  
20 the application. This does not limit or abridge the right of any person to seek available judicial remedies  
21 to require the department to act in a timely manner.

22 (10) When the department approves or denies the application for a permit under this section, a  
23 person who is jointly or severally adversely affected by the department's decision may request a hearing  
24 before the board. The request for hearing must be filed within 15 days after the department renders its  
25 decision and must include an affidavit setting forth the grounds for the request. The contested case  
26 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing  
27 before the board under this subsection.

28 (11) The department's decision on the application is not final unless 15 days have elapsed from  
29 the date of the decision and there is no request for a hearing under this section. The filing of a request for  
30 a hearing postpones the effective date of the department's decision until the conclusion of the hearing and

1 issuance of a final decision by the board.

2 ~~(12) (a) A permit applicant may operate a temporary power generation unit or units with a total~~  
3 ~~generation capacity of 10 megawatts or less and used exclusively NOT MORE THAN 125 MEGAWATTS AT 90~~  
4 ~~DEGREES FAHRENHEIT AMBIENT AIR TEMPERATURE for generating electricity for use in MONTANA by, or direct sale~~  
5 ~~and delivery to, a permitted facility if the applicant has submitted a signed permit application. THE PERMIT~~  
6 ~~APPLICATION MUST BE ACCOMPANIED BY AN APPLICATION FEE OF \$100 FOR A TEMPORARY POWER GENERATION UNIT WITH~~  
7 ~~A GENERATION CAPACITY OF MORE THAN 10 MEGAWATTS. AT LEAST 50% OF THE ELECTRICAL ENERGY PRODUCED BY~~  
8 ~~THE TEMPORARY POWER GENERATION UNIT MUST BE USED IN OR OFFERED FOR SALE IN MONTANA AT PRICES THAT DO NOT~~  
9 ~~EXCEED 6 CENTS PER KILOWATT HOUR. EXCEPT AS PROVIDED IN SUBSECTIONS(12)(B) AND(12)(C), AN APPLICANT WHO~~  
10 ~~HAS RECEIVED A WRITTEN NOTICE THAT ITS APPLICATION IS CONSIDERED FILED PURSUANT TO SUBSECTION (8) MAY:~~

11 ~~(i) FOR A TEMPORARY POWER GENERATION UNIT OR UNITS WITH A TOTAL ELECTRICAL GENERATION CAPACITY OF~~  
12 ~~NOT MORE THAN 125 MEGAWATTS, CONSTRUCT THE UNIT OR UNITS. OPERATION OF THE UNIT OR UNITS MAY COMMENCE~~  
13 ~~UPON THE DEPARTMENT'S ISSUANCE OF A PERMIT UNDER THIS SECTION.~~

14 ~~(ii) FOR A TEMPORARY POWER GENERATION UNIT OR UNITS WITH A TOTAL ELECTRICAL GENERATING CAPACITY OF~~  
15 ~~10 MEGAWATTS OR LESS, CONSTRUCT AND OPERATE THE UNIT OR UNITS.~~

16 ~~(b) The CONSTRUCTION OR operation of a temporary power generation unit or units described in~~  
17 ~~subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation~~  
18 ~~unit or units continues after a department decision to deny the permit application becomes final as~~  
19 ~~provided in this section.~~

20 ~~(c) (i) Operation of a temporary power generation unit or units described in subsection (12)(a) may~~  
21 ~~begin upon the department's receipt of a signed permit application WRITTEN NOTICE THAT THE APPLICATION IS~~  
22 ~~CONSIDERED FILED PURSUANT TO SUBSECTION (8).~~

23 ~~(iii)(i) A permit applicant shall discontinue CONSTRUCTION OR operation of a temporary power~~  
24 ~~generation unit or units if the applicant is notified by the department in writing that the applicant has failed~~  
25 ~~to submit by the department's deadline any additional information that is necessary to process the permit~~  
26 ~~application.~~

27 ~~(iii)(ii) THE OPERATION OF A PERMIT APPLICANT'S TEMPORARY POWER GENERATION UNIT OR UNITS DESCRIBED~~  
28 ~~IN SUBSECTION (12)(A) MAY NOT VIOLATE AMBIENT AIR QUALITY STANDARDS.~~

29 ~~(d) A permit issued UNDER THIS PART AND pursuant to THE PROVISIONS OF this subsection (12) must~~  
30 ~~expire no later than 2 years from the date that the department received the permit application OF ISSUANCE~~

1 THAT THE DEPARTMENT RECEIVED THE PERMIT APPLICATION and must require removal of the temporary power  
2 generation unit or units upon expiration of the permit unless an air quality permit for permanent operation  
3 has been issued.

4 ~~—— (13) CONSTRUCTION FOR A TEMPORARY POWER GENERATION UNIT MAY COMMENCE UPON THE DEPARTMENT'S~~  
5 ~~WRITTEN NOTICE AS PROVIDED FOR IN SUBSECTION (12)(c)(i):"~~

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7 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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9 NEW SECTION. SECTION 3. RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE  
10 MEANING OF 1-2-109, TO APPLICATIONS FILED ON OR AFTER JANUARY 1, 2001.

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12 NEW SECTION. SECTION 4. TERMINATION. [THIS ACT] TERMINATES JULY 1, 2005.

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